IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 362 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INSURANCE CO.LTD. - Appellant(s)
Versus
JASIBEN WD/O. PARVATSINH MAGANBHAI BARIYA & 7 - Defendant(s)

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Appearance :
MR VC THOMAS for Appellant(s) : 1,
None for Defendant(s) : 1,
None for Defendant(s) : 2 - 3,5 - 7.
DELETED for Defendant(s) : 4,
MR IM PANDYA, ASSTT.GOVERNMENT PLEADER for Defendant(s) : 8,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 05/09/2007

ORAL JUDGMENT

1. Shri V.C. Thomas, learned counsel for the appellant; none for the respondents no.

1,2,3,5,6 and 7; name of respondent no.4 has already been deleted; Shri I.M. Pandya, learned AGP for the respondent no.8.

2. Shri Thomas, learned counsel for the appellant raised only one question in support of the appeal that as the deceased was gratuitous passenger in the Govt. vehicle, the Insurance Company could not be held jointly and severally liable along with the driver of the vehicle and the owner of the vehicle, that is, respondent no.8. Shri I.M. Pandya, learned AGP for the respondent no.8 has opposed the appeal and submitted that the Tribunal was justified in holding the Insurance Company liable.

3. The findings recorded by the learned Tribunal would clearly show and even otherwise, it would be clear from the records that the the deceased was a gratuitous passenger in the vehicle belonging to the State Government. In a private vehicle, a passenger would not be allowed to travel and in such case, the Insurance Company cannot be held liable. In view of such legal position, the appeal deserves to and is accordingly allowed. The Insurance Company is exonerated of its liability. No costs.

4. I am told that the Insurance Company has already made payment of the amount to the claimants. If that be so, the Insurance Company would be entitled to recover the entire amount with 6% interest from the State Government, from the date of the deposit. The State is advised to

deposit the entire amount with the Claims Tribunal within a period of 60 days from today. If it is not so done, the Insurance Company would be entitled to take coercive process against the State and its authorities.

[R.S. GARG, J.]

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